

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

E.I. DU PONT DE NEMOURS AND
COMPANY, a Delaware corporation

Plaintiff,

V.

CANYON GROUP LLC a Delaware limited liability company, and NISSAN CHEMICAL INDUSTRIES, LTD., a Japanese corporation

Defendants.

C.A. No. 05-200-

**MOTION OF PLAINTIFF E. I. DU PONT DE NEMOURS AND COMPANY FOR
EXPEDITED PROCEEDINGS RELATED TO PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION IN AID OF INTERNATIONAL ARBITRATION**

Pursuant to Federal Rules of Civil Procedure 12, 16, 26, 30, 33, 34, 36, and 65, as well as Local District Court Civil Rules 7.1.2 and 7.1.4, Plaintiff E. I. du Pont de Nemours and Company (“DuPont”) hereby moves this Court for the entry of an Order expediting proceedings related to the Motion for Preliminary Injunction in Aid of International Arbitration (“P.I. Motion”) against Defendants Canyon Group LLC and Nissan Chemical Industries, Ltd. (collectively, “Defendants”). Specifically, DuPont requests an expedited schedule addressing the answer to the Complaint, responses to written discovery, notice period for depositions, briefing the P.I. Motion, and the Court’s hearing on the P.I. Motion. In support of its Motion for Expedited Proceedings Related to Plaintiff’s Motion for Preliminary Injunction in Aid of International Arbitration, DuPont states as follows:

BACKGROUND

1. DuPont filed its Complaint, the declaration of Thomas J. Harkin, the P.I. Motion, and the brief in support of the P.I. Motion on April 7, 2005. DuPont hereby incorporates the allegations as set forth in those pleadings as if they are fully set forth herein.

2. On information and belief, Defendant Nissan Chemical Industries, Ltd. received actual notice of the filing of the Complaint and other pleadings on April 7, 2005.

3. In addition, DuPont forwarded copies of the pleadings to counsel for Defendant Nissan Chemical Industries, Ltd. and to Larry Miller of Defendant Canyon Group LLC via e-mail on April 8, 2005.

4. Defendant Nissan Chemical Industries, Ltd. has already retained Richards, Layton & Finger as counsel in this matter. It is unknown at this time whether Canyon Group LLC will retain Richards, Layton & Finger or other counsel.

5. In its P.I. Motion, DuPont seeks a preliminary injunction to prevent Defendants, or any of Defendants' affiliates or contractual partners from using confidential and proprietary information to formulate, offer to sell, sell, distribute or use certain products in the United States, Canada, Central America, South America, the Caribbean Islands, Australia or Thailand until the dispute over the exclusivity terms of a Development/License Agreement is resolved through arbitration or until August 11, 2009 when the Development/License Agreement expires.

ARGUMENT

I. THIS COURT HAS AUTHORITY TO ENTER AN EXPEDITED SCHEDULE

6. This Court has the authority to enter the attached proposed form of order pursuant to its broad authority to schedule and manage its cases. Fed. R. Civ. P. 16.

7. The Federal Rules of Civil Procedure provide this Court with broad discretion to permit expedited discovery. Rule 26(d) provides that court-ordered discovery prior to a conference between parties is “appropriate” in urgent cases. Notes of Advisory Committee, Fed. R. Civ. P. 26; Fed. R. Civ. P. 26(d). With regard to both document discovery and interrogatories, the Federal Rules specifically provide that “[a] shorter or longer time” than otherwise provided “may be directed by the court.” Fed. R. Civ. P. 34(b) (document requests); Fed. R. Civ. P. 33(b)(3) (interrogatories).

8. “Expedited discovery is particularly appropriate when a plaintiff seeks injunctive relief because of the expedited nature of injunctive proceedings.” *Ellsworth Assoc., Inc. v. United States*, 917 F. Supp. 841, 844 (D.D.C. 1996). As held by this Court, “discovery should precede consideration of dispositive motions when the facts sought to be discovered are relevant to consideration of the particular motion at hand.” *Coastal States Gas Corp. v. Dept. of Energy*, 84 F.R.D. 278, 282 (D. Del. 1979) (granting expedited discovery).

9. Expedited discovery is appropriate in this case because of the nature of the relief sought (i.e., a preliminary injunction), and because allowing the parties to take some discovery prior to the hearing on the P.I. Motion will enable the parties to present a more complete factual record to this Court.

10. This Court may order the parties to adhere to an expedited briefing pursuant to Local District Court Civil Rule 7.1.2. That rule provides that, “[u]nless otherwise

ordered by the Court, the briefing and affidavit schedule for presentation of all motions shall be....” L.R. 7.1.2 (emphasis added).

II. DUPONT WILL SUFFER IRREPARABLE HARM IF THIS COURT DOES NOT ENTER AN ORDER EXPEDITING PROCEEDINGS RELATED TO THE P.I. MOTION

11. As set forth more fully in the P.I. Motion and the supporting brief, as well as the other pleadings filed, Defendants will continue to encroach on DuPont’s exclusive territory, culminating in the crucial upcoming months of June and July 2005 with the infliction of irreparable harm on DuPont in the form of lost goodwill, lost customers, and price erosion.

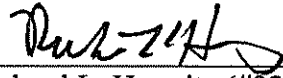
12. If the P.I. Motion is not heard and decided in early May 2005, DuPont will suffer the irreparable harm anticipated in the P.I. Motion without the P.I. Motion having been decided, thereby denying DuPont the relief sought by virtue of the P.I. Motion and rendering the P.I. Motion moot.

13. Finally, Defendants will not be prejudiced by the entry of the attached proposed form of order because they have actual notice of the P.I. Motion, and the other pleadings filed. Furthermore, Defendant Nissan Chemical Industries, Inc. has already retained counsel.

WHEREFORE, DuPont respectfully requests that this Court grant its Motion for Expedited Proceedings Related to Plaintiff’s Motion for Preliminary Injunction in Aid of International Arbitration, and order a schedule as set forth on the attached proposed form of order.¹

¹ Although DuPont has left the date for the hearing blank on the attached proposed order, DuPont requests that the hearing take place during the week of May 2, 2005.

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DATED: April 8, 2005
PA&C 677166v1

**IN THE UNITED STATES DISTRICT COURT
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CERTIFICATE OF SERVICE

I, Richard L. Horwitz, hereby certify that on April 8, 2005, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following and the document is available for viewing and downloading from CM/ECF:

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I hereby certify that on April 8, 2005, I have Federal Expressed and emailed the documents to the following non-registered participant at the following addresses:

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